

AN INDIVIDUAL WHO IS INVOLVED IN THE DECISION MAKING PROCESS AND WHO IS PERSONALLY AWARE OF AN EX PARTE COMMUNICATION THAT IS MADE IN VIOLATION OF SUBSECTION (A) OF THIS SECTION SHALL:

(1) INCLUDE IN THE RECORD OF THE CONTESTED CASE:

(I) EACH WRITTEN COMMUNICATION RECEIVED;

(II) A MEMORANDUM THAT STATES THE SUBSTANCE OF EACH ORAL COMMUNICATION RECEIVED;

(III) EACH WRITTEN RESPONSE TO A COMMUNICATION;
AND

(IV) A MEMORANDUM THAT STATES THE SUBSTANCE OF EACH ORAL RESPONSE TO THE COMMUNICATION; AND

(2) SEND TO EACH PARTY A COPY OF EACH COMMUNICATION, MEMORANDUM, AND RESPONSE.

(C) REBUTTAL.

A PARTY MAY REBUT AN EX PARTE COMMUNICATION IF THE PARTY REQUESTS THE OPPORTUNITY TO REBUT WITHIN 10 DAYS AFTER NOTICE OF THE COMMUNICATION.

(D) REMEDIAL ACTION.

(1) TO ELIMINATE THE EFFECT OF AN EX PARTE COMMUNICATION THAT IS MADE IN VIOLATION OF SUBSECTION (A) OF THIS SECTION, THE HEARING OFFICER MAY:

(I) WITHDRAW FROM THE PROCEEDING; OR

(II) TERMINATE THE PROCEEDING WITHOUT
PREJUDICE.

(2) AN ORDER TO TERMINATE THE PROCEEDING WITHOUT PREJUDICE SHALL STATE THE LAST DATE BY WHICH A PARTY MAY REINSTITUTE THE PROCEEDING.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 41, § 254A.

In subsection (a)(2) of this section, reference to "members of an advisory staff of the agency or any counsel for the agency" is substituted for the former reference to "members of an advisory staff, including any agency legal counsel," which seemed to state, unintentionally, that counsel must be a member of an advisory staff.

In subsection (d)(1) of this section, the former clause "if he deems it necessary" is deleted as unnecessary in light of the word "may".